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February 18, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

On behalf of our clients, we hereby submit an original and six (6) copies of the enclosed Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief ("Petition"). Also enclosed is a completed FCC Form 159 Remittance Advice and a check to cover the filing fee in connection with the Petition.

Please contact the undersigned should you have any questions.

Sincerely,

Karen Brinkmann
Jarrett S. Taubman

Counsel for China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company, Each a Debtor-in-Possession

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company, Each a Debtor-in-Possession	)	WC Docket No. _________
	)	
Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief	)	

PETITION FOR CONVERSION TO PRICE CAP REGULATION AND FOR LIMITED WAIVER RELIEF

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February 18, 2010

Summary

FairPoint Communications, Inc. ("FairPoint") currently operates subsidiaries subject to interstate price cap regulation in some study areas, and rate-of-return regulation in others, pursuant to a waiver of Sections 61.41(b) and (c) of the Commission's rules. In the instant petition, China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company, each a debtor-in-possession (collectively, the "FairPoint Petitioning LECs"), rate-of-return regulated local exchange carrier ("LEC") subsidiaries of FairPoint, request that the Commission grant limited waivers of its rules as necessary to permit: (i) the FairPoint Petitioning LECs to convert to price cap regulation as of July 1, 2010, while retaining their existing interstate common line support ("ICLS"); and (ii) the other local exchange carrier subsidiaries of FairPoint currently subject to rate-of-return regulation in the interstate jurisdiction ("FairPoint ROR LECs") to remain subject to such regulation. The FairPoint Petitioning LECs present a reasonable proposal, consistent with Commission precedent, for transitioning to price cap regulation, freezing ICLS support at current per-line levels, and capping total annual ICLS support at 2009 levels for the FairPoint Petitioning LECs.

Grant of the requested waivers would be consistent with waivers granted to similarly situated carriers to transition from rate-of-return to price cap regulations. Notably, the Commission has granted numerous other midsize carriers authority to convert from rate-of-return to price cap regulation in accordance with principles established in the *CALLS Order*, while retaining ICLS at frozen per-line levels. Further, upon grant of this petition, FairPoint subsidiaries no longer would be operating pursuant to price cap and rate-of-return regulation in the same state.

There is "good cause" for the requested waivers. As discussed herein, the Commission's rules afford carriers the right to elect price cap status but do not provide a clear path through which carriers may exercise that right. Thus, ambiguities in the Commission's rules frustrate Commission policy, and make strict compliance with those rules inconsistent with the public interest. Grant of the requested waivers would facilitate the FairPoint Petitioning LECs' transition from cost-based, rate-of-return regulation to incentive-based price cap regulation in a manner consistent with Commission policy, and would permit FairPoint to more closely align its operations and rate structure in northern New England, thereby becoming more efficient, innovative, and productive. Moreover, FairPoint would be permitted to retain rate-of-return regulation for its remaining LECs in other states, so that they can continue to meet varied market demands. Accordingly, the FairPoint Petitioning LECs respectfully request that the Commission, through the Wireline Competition Bureau, expeditiously grant the instant petition.

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Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief	)	

PETITION FOR CONVERSION TO PRICE CAP REGULATION AND FOR LIMITED WAIVER RELIEF

China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company, each a debtor-in-possession (collectively, the "FairPoint Petitioning LECs"), rate-of-return regulated local exchange carrier ("LEC") subsidiaries of FairPoint Communications, Inc. ("FairPoint"), hereby request that the Commission grant limited waivers of its rules as necessary to permit the FairPoint Petitioning LECs to convert to price cap regulation as of July 1, 2010. The FairPoint Petitioning LECs also request that the Commission grant limited waivers of its rules as necessary to: (i) permit the FairPoint Petitioning LECs to retain interstate common line support ("ICLS") at 2009 levels following such conversion; and (ii) permit the other LEC subsidiaries of FairPoint that are subject to rate-of-return regulation, listed in Attachment A (collectively, the "FairPoint ROR LECs"), to remain subject to such regulation.

As discussed below, grant of the requested waivers would further the public interest. This relief would provide the FairPoint Petitioning LECs with regulatory incentives to maintain and enhance efficient and innovative operations, and would result in lower overall rates for consumers, consistent with waivers granted to similarly situated carriers to transition from rate-of-return to price cap regulation. Waiver also would permit FairPoint to more closely align its operations and rate structure in northern New England, while retaining rate-of-return regulation for its LECs in other states so that they can continue to meet varied market demands.[1] Grant of the requested waiver of the "all-or-nothing" rule would be consistent with a waiver granted to FairPoint in 2008 to permit FairPoint to operate lines acquired from Verizon in Maine, New Hampshire, and Vermont on a price cap basis, while maintaining other LEC operations subject to rate-of-return regulation.[2] Accordingly, the FairPoint Petitioning LECs respectfully request that the Commission, through the Wireline Competition Bureau, expeditiously grant the instant petition.

I. BACKGROUND

A. FairPoint and the FairPoint Petitioning LECs

FairPoint is a leading provider of a full range of communications services to residential and business customers including: local and long distance voice, data, Internet, television, and broadband. FairPoint owns and operates 33 LECs in 18 states (see Attachment A). The FairPoint Petitioning LECs, which provide service in rural areas of Maine and Vermont, are subject to rate-of-return regulation. These LECs participate in the National Exchange Carrier Association ("NECA") traffic-sensitive pool.[3]

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1 Community Service Telephone Co., Debtor-in-Possession, a small LEC operating in Maine, would continue to operate as an average schedule company. *See* Declaration of Patrick L. Morse, attached hereto, at ¶¶ 5, 6 ("Declaration").

2 *See Petition of FairPoint Communications, Inc. for Waiver of Sections 61.41(b) and (c) of the Commission's Rules*, Order, 23 FCC Rcd 892 (2008) ("*2008 FairPoint Waiver Order*").

3 *See* Declaration at ¶¶ 3, 4.

B. Previous Grants of Authority to Convert to Price Cap Regulation

The Commission has concluded that price cap regulation, which provides incentives to carriers to maintain and enhance efficient operations, is preferable to legacy rate-of-return regulation for many LECs.[4] Accordingly, Section 61.41(a)(3) of the Commission's rules explicitly allows rate-of-return carriers to convert to price cap regulation.[5] However, the Commission's rules do not provide an explicit process by which existing rate-of-return carriers may convert to price cap regulation.[6]

Notwithstanding, in recent years the Commission has granted numerous other midsize carriers permission to convert from rate-of-return to price cap regulation in accordance with principles established in the *CALLS Order*.[7] More specifically, the Commission has permitted the requesting carriers to convert from rate-of-return to price cap regulation by establishing initial price cap indices ("PCIs") for their price cap baskets, and in particular has allowed carriers to target their average traffic-sensitive ("ATS") rates to the applicable target

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4 *See Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, at ¶ 21 (1990) ("*LEC Price Cap Order*").

5 *See* 47 C.F.R. § 61.41(a)(3).

6 *Cf. Access Charge Reform,* Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("*CALLS Order*").

7 *See ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc. and ACS of the Northland, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief,* Order, 24 FCC Rcd 4664 (2009) ("*ACS Order*"); *CenturyTel, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief,* 24 FCC Rcd 4677 (2009) ("*CenturyTel Order*"); *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation,* Order, 23 FCC Rcd 7353 (2008) ("*PRTC Order*"); *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief,* Order, 23 FCC Rcd 5294 (2008) ("*Windstream Order*").

specified in Section 61.3(qq) of the Commission's rules.[8] The Commission has also permitted these carriers to retain ICLS based on their per-line disaggregated ICLS amounts in the year preceding conversion to price cap status, frozen at those per-line levels on a going-forward basis, with aggregate annual ICLS support capped at an amount equal to overall ICLS in the year preceding conversion to price cap status (after application of any required true-ups).[9]

C. 2008 "All-or-Nothing" Rule Waiver

On January 25, 2008, the Commission authorized FairPoint to acquire Verizon's exchanges in Maine, New Hampshire, and Vermont.[10] Because the study areas acquired from Verizon were subject to interstate price cap regulation, while FairPoint's legacy study areas were subject to rate-of-return regulation, FairPoint sought and obtained a waiver of the Commission's "all-or-nothing" rule to maintain rate-of-return regulation for its legacy LECs.[11] FairPoint's legacy rate-of-return LECs serve rural areas with low population densities and face a variety of market conditions, thus FairPoint relied on rate-of-return regulation to maintain efficient operations and provide rate stability.[12]

In granting the waiver request, the Commission agreed that it should be "sensitive to the needs of smaller carriers"—namely, FairPoint's legacy rate-of-return LECs— and that it

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8 47 C.F.R. § 61.3(qq). *See ACS Order* at ¶ 18; *CenturyTel Order at* ¶ 13; *PRTC Order* at ¶ 21; *Windstream Order* at ¶ 18.

9 *ACS Order* at ¶ 20; *CenturyTel Order at* ¶ 18; *PRTC Order* at ¶ 23; *Windstream Order* at ¶ 20.

10 *See Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 514 (2008) ("*FairPoint Merger Order*").

11 *2008 FairPoint Waiver Order* at ¶ 1.

12 *See* Declaration at ¶ 6.

would be "inappropriate" to require those carriers to convert to interstate price cap regulation.[13] The Commission also acknowledged that the requested waiver would be consistent with the underlying policy objectives of the "all-or-nothing" rule, and that the benefits flowing from the waiver outweighed any risk that FairPoint would attempt to "game" the system.[14] Finally, the Commission expressed reluctance to apply the "all-or-nothing" rule to the transaction when ongoing proceedings might lead to the rule's modification or elimination.[15] As a result of the Commission's waiver of the "all-or-nothing" rule, FairPoint currently operates both price cap and rate-of-return LECs in Maine and Vermont.

II. THE FAIRPOINT PETITIONING LECS' PROPOSAL

The FairPoint Petitioning LECs, which currently are subject to rate-of-return regulation in the interstate jurisdiction, wish to take advantage of the opportunity provided by Section 61.41(a)(3) to elect price caps in order to more closely align FairPoint's operations and rate structure in northern New England. However, as noted above, the Commission's rules do not provide a clear path for carriers to elect price caps. Accordingly, the FairPoint Petitioning LECs present herein a reasonable proposal for transitioning to price cap regulation. The FairPoint Petitioning LECs' proposal is similar to other proposals for converting carriers from rate-of-return to price cap regulation that have been approved by the Commission. The FairPoint Petitioning LECs' proposal includes processes for initializing PCIs for price cap rate baskets, as

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13 *2008 FairPoint Waiver Order* at ¶ 6.

14 *Id.* at ¶ 7.

15 *Id.* at ¶ 9. *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal –State Joint Board on Universal Service*, Second Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, at ¶ 10 (2004) ("*MAG Second Further Notice*") ("We defer further action on the all-or-nothing rule until we have reviewed the record complied in response to the further notice that we also issue today.").

well as for ensuring the continuation of necessary universal service support.

A. Transition to Price Cap Regulation

The FairPoint Petitioning LECs propose to convert to price cap regulation by initializing PCIs as described below, and filing a price cap tariff with separate rates for each study area:[16]

1. CMT Basket

The FairPoint Petitioning LECs propose to create PCIs for the common line, marketing, and residual interconnection charge interstate access elements ("CMT") basket for each study area, by multiplying end-user rates in effect as of January 1, 2010 by 2009 base period demand, consistent with Commission precedent.[17] To this result, the FairPoint Petitioning LECs would add the marketing expenses being shifted to the CMT basket pursuant to Section 69.156 of the Commission's rules[18] and would reduce the PCI for each study area's CMT basket by an amount equal to the presubscribed interexchange carrier charge ("PICC") and carrier common line charge ("CCLC") revenues the relevant FairPoint Petitioning LEC would forego. The Commission required Alaska Communieations Systems, CenturyTel, Windstream, Puerto Rico Telephone Company, Frontier, and Consolidated Communications to follow this approach when the Commission granted their respective petitions to convert to price cap regulation in recent years.[19]

The FairPoint Petitioning LECs also propose to calculate their initial average

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16 *See* Declaration at ¶ 7. FairPoint is not seeking to combine any study areas through this petition.

17 *Cf. Windstream Order* at ¶ 18.

18 47 C.F.R. § 69.156.

19 *See ACS Order* at ¶ 14; *CenturyTel Order at* ¶ 12; *PRTC Order* at ¶ 18; *Windstream Order* at ¶ 14.

price cap CMT revenues per-line month consistent with FCC precedent.[20] As the Commission has required in prior price cap conversion orders, CMT revenues would include 2009 subscriber line charge ("SLC") revenues plus the marketing expenses shifted to the CMT basket from the local switching and transport baskets pursuant to Section 69.156 of the Commission's rules.[21] Average price cap CMT revenues per-line month would then be the CMT revenues divided by the 2009 base period demand.[22] The average price cap CMT revenues per-line month, in conjunction with the SLC caps imposed under Part 69 of the Commission's rules, would create the ceiling on SLC charges that the FairPoint Petitioning LECs could assess end-users.[23]

2. Traffic-Sensitive and Trunking Baskets

Because the FairPoint Petitioning LECs participate in the NECA traffic-sensitive pool, and thus do not have current rates based on their own costs, their switched access rates would be initialized to target the authorized rate-of-return of 11.25%, based on 2009 base period demand, and then adapted to the price cap rate structure.[24] The Commission has previously found this to be a reasonable approach for initializing rates and PCIs for study areas that are in the NECA pool.[25] These PCIs would be reduced to eliminate any marketing expenses that were recovered through switched access rates in 2009.[26] Each FairPoint Petitioning LEC also would establish actual price indices ("APIs"), service categories, and service band indices for the

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20 *See ACS Order* at ¶¶ 12-13; *CenturyTel Order at* ¶¶ 10-11; *PRTC Order* at ¶¶ 16-17; *Windstream Order* at ¶¶ 12-13.

21 47 C.F.R. § 69.156.

22 47 C.F.R. § 61.3(d) (using a similar formula with respect to 2000 revenues).

23 *See generally ACS Order* at ¶ 15; *CenturyTel Order at* ¶ 11; *PRTC Order* at ¶ 20; *Windstream Order* at ¶ 16. *See also* 47 C.F.R. § 69.152.

24 *See ACS Order* at ¶ 15; *CenturyTel Order at* ¶ 13; *PRTC Order* at ¶ 19; *Windstream Order* at ¶ 17.

25 *See id.*

26 *See* 47 C.F.R. § 69.156.

traffic-sensitive and trunking baskets for each study area, consistent with the Commission's rules and prior price cap conversion orders.[27] The FairPoint Petitioning LECs propose to reduce their rates over time to the target rate of $0.0065, using an annual productivity factor ("X-factor") of 6.5 percent.[28]

3. Special Access Basket

Because the FairPoint Petitioning LECs do not have current rates based on their own costs, their special access rates would be initialized to target the authorized rate-of-return of 11.25%, based on 2009 base period demand, and then adapted to the price cap rate structure. This approach to setting initial PCIs for the special access basket is consistent with the manner in which special access rates were initialized in previous price cap conversions.[29]

B. Treatment of the FairPoint ROR LECs

The transition to price cap regulation of the FairPoint Petitioning LECs, described above, is not expected to have any significant impact on the FairPoint ROR LECs. Those LECs would remain subject to rate-of-return regulation and would continue to operate in separate subsidiaries from FairPoint's price cap LECs.

C. Continuation of Universal Service Support

The FairPoint Petitioning LECs' ability to realize the public interest benefits of their conversion to price cap regulation depends upon their continued receipt of some high-cost universal service support. However, the Commission's rules do not make ICLS available to

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27 *See ACS Order* at ¶ 16; *CenturyTel Order at* ¶ 13; *PRTC Order* at ¶ 20; *Windstream Order* at ¶ 16. *See also* 47 C.F.R. §§ 61.46; 61.42(e)(1) and (2); 61.47.

28 *See* 47 C.F.R. §§ 61.3(qq) and 61.45. The FairPoint Petitioning LECs currently receive local switching support ("LSS"). *See Declaration* at ¶ 3. This support would be excluded from PCI calculations. *See PRTC Order* at ¶ 20 n.73.

29 *See CenturyTel Order at* ¶ 14; *Windstream Order* at ¶ 18, *PRTC Order* at ¶ 21.

price cap carriers,[30] and the Commission tentatively has concluded that carriers converting from rate-of-return regulation to price cap regulation are ineligible for interstate access support ("IAS") established in the *CALLS Order*.[31] Absent Commission intervention, the FairPoint Petitioning LECs' conversion to price cap regulation would result in their loss of explicit support to offset the interstate portion of the FairPoint Petitioning LECs' costs that is not recovered through interstate access charges.

Accordingly, the FairPoint Petitioning LECs' request to convert to price caps is conditioned on the Commission's grant of limited waivers of its rules, including applicable portions of Sections 54.901, 54.903, and 54.802 through 54.806, as necessary to permit the FairPoint Petitioning LECs to continue to receive ICLS as price cap carriers.[32] Specifically, the FairPoint Petitioning LECs propose that the Commission freeze ICLS provided to the FairPoint Petitioning LECs at 2009 per-line disaggregated amounts, after the application of any true-ups based on actual cost and revenue data for 2009.[33] This approach is consistent with the Commission's prior price cap conversion orders.[34]

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30 *See* 47 C.F.R. § 54.901(a) (limiting ICLS to rate-of-return carriers).

31 *See MAG Second Further Notice* at ¶ 93 (2004).

32 *See Windstream Order* at ¶¶ 20, 22.

33 The monthly frozen per-line ICLS amounts of each FairPoint Petitioning LEC would be calculated by dividing the final annual 2009 ICLS amounts by twelve times the average of each FairPoint Petitioning LEC's line counts as of December 31, 2009 and December 31, 2008. The FairPoint Petitioning LECs also propose that, following conversion to price cap regulation, the overall annual ICLS of each FairPoint Petitioning LEC be capped at an amount equal to its overall 2009 ICLS, after application of required true-ups. The FairPoint Petitioning LECs would forego any PICC or CCLC that might otherwise be assessable under the price cap rules, and would forego an increase in the non-primary residential SLC cap.

34 *See ACS Order* at ¶¶ 20-21; *CenturyTel Order at* ¶ 18; *PRTC Order* at 23-24; *Windstream Order* at ¶¶ 20-21.

III. GRANT OF THE REQUESTED WAIVERS WOULD SERVE THE PUBLIC INTEREST

The Commission may waive its rules for "good cause shown."[35] More specifically, the Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule and such deviation would serve the public interest, or where the particular facts make strict compliance inconsistent with the public interest.[36] The Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.[37] The FairPoint Petitioning LECs' waiver requests meet this standard.

A. Limited Waiver of the Commission's "All-or-Nothing" Rule

Pursuant to the Commission's waiver of 61.41(b) and (c), FairPoint operates under both price caps and rate-of-return regulation in the interstate jurisdiction. As a result, in the three northern New England states, FairPoint operates LECs with different rate structures and tariffed terms. Allowing dual mode operation in northern New England facilitated FairPoint's transition from Verizon, but now inhibits FairPoint's ability to price services to meet consumer demands. Section 61.41(b) of the FCC's rules precludes the FairPoint Petitioning LECs from transitioning to price cap regulation while the FairPoint ROR LECs remain subject to rate-of-return regulation.[38] There is "good cause" to waive that rule. As an initial matter, grant of that waiver would be fully consistent with a similar waiver granted to FairPoint in 2008 that covered

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[35] 47 C.F.R. § 1.3.

[36] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

[37] *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

[38] 47 C.F.R. § 61.41(b) (requiring that "if a telephone company, or any one of a group of affiliated telephone companies, files a price cap tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file a price cap tariff in all their study areas").

all of FairPoint's rate-of-return regulated LECs.[39] The same rationale that justified waiver in that case justifies waiver in this case.

As the Commission recognized in its *2008 FairPoint Waiver Order*, waiver of the "all-or-nothing" rule in this situation would not frustrate the rule's underlying policy goals.[40] The FairPoint Petitioning LECs have no intention of reverting back to rate-of-return regulation if the Commission grants their request to convert to price cap regulation and the Commission's rules provide a "one-way door" to prevent such action.[41] Moreover, grant of this petition would largely unify the regulatory status of FairPoint's operating LECs in northern New England, eliminating any threat of cost-shifting between subsidiaries in the same state.[42] There has never been any concern about cost-shifting at FairPoint because its operating LECs have been separate subsidiaries.[43] A grant of this waiver would only further separate FairPoint's price cap LECs from its rate-of-return LECs.

The FairPoint LECs are also subject to special circumstances that warrant deviation from the "all-or-nothing" rule. Grant of this petition would allow FairPoint to operate more efficiently by more closely aligning its operations and rate structure in northern New England, while still permitting the FairPoint ROR LECs to operate pursuant to rate-of-return regulation in order to meet varied market demands. The FairPoint ROR LECs, which are

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39 *See generally 2008 FairPoint Waiver Order*.

40 *Id.* at ¶ 7.

41 *See* 47 C.F.R. § 61.41(d) (stating that once a LEC becomes subject to price cap regulation, it may not withdraw from such regulation).

42 *See* Declaration at ¶ 8. Community Service Telephone Co., Debtor-in-Possession, a small LEC operating in Maine, would continue to operate as an average schedule company. No FairPoint subsidiary would operate as a rate-of-return carrier in northern New England.

43 *See 2008 FairPoint Waiver Order* at ¶ 7.

geographically dispersed and serve smaller coverage areas with low average population density, rely on rate-of-return regulation to ensure that they can invest in their infrastructures to better serve their customers. Thus, as the Commission held in its *2008 FairPoint Waiver Order*, it would be "inappropriate" to require FairPoint's LECs serving these areas to adopt price cap regulation.[44]

However, price cap regulation is appropriate for the FairPoint Petitioning LECs serving northern New England in markets that are adjacent or near to the FairPoint price cap territories acquired from Verizon in 2008. The Commission has concluded that incentive-based regulation is preferable to rate-of-return regulation.[45] Among the benefits of price cap regulation cited by the Commission are incentives for carriers to become more productive, innovative, and efficient.[46] The Commission also has found that price cap regulation is likely to benefit consumers directly or indirectly through lower access prices.[47] The productivity, inventiveness, and efficiency of FairPoint's operations would be further enhanced by the proposed conversion.

The FairPoint Petitioning LECs cannot complete such conversion absent the requested waivers due to ambiguities in the Commission's rules. While Section 61.41(a)(3) of the Commission's rules permits carriers to convert rate-of-return study areas to price cap study areas,[48] there is no clear path by which a rate-of-return LEC can adopt price cap regulation as

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44 *See 2008 FairPoint Waiver Order* at ¶ 6; *ALLTEL Corporation; Petition for Waiver of Section 61.41 of the Commission's Rules and Applications for Transfer of Control*, Memorandum Opinion and Order, 14 FCC Rcd 14191, ¶ 34 (1999).

45 *LEC Price Cap Order* at ¶ 21.

46 *Id.* at ¶ 31.

47 *Id.* at ¶ 33.

48 47 C.F.R. § 61.41(a)(3).

modified by the *CALLS Order*.[49] Therefore, a strict application of the Commission's rules would frustrate Commission policy as set forth in Section 61.41(a)(3). Grant of the requested waivers would serve to advance the Commission's preference for price cap regulation, and would permit the FairPoint Petitioning LECs to become more efficient, innovative, and productive.[50]

As was the case in 2008, the Commission has not released any further guidance regarding the modification or elimination of the "all-or-nothing" rule.[51] Consistent with the Commission's position in 2008, it would not be in the public interest to require the FairPoint ROR LECs to convert to price cap regulation simply because the Commission has yet to design a more appropriate regulatory scheme.

B. Limited Waiver of the Commission's Universal Service Rules

There is also good cause for limited waiver of the Commission's universal service rules to permit the FairPoint Petitioning LECs to continue to receive ICLS at current levels. Absent such support, the FairPoint Petitioning LECs would be unable to benefit from conversion to price cap status without adversely affecting other price cap carriers that receive IAS. On the other hand, permitting the FairPoint Petitioning LECs to retain ICLS would not burden the high-cost fund. Consistent with the Commission's precedent, FairPoint proposes to freeze support at current per-line levels, subject to an overall cap for the affected LECs equal to their combined ICLS for 2009 after the application of any required true-ups.[52] Support therefore could not increase as a result of granting the requested waiver. If anything, the FairPoint Petitioning LECs' proposal would lead over time to an overall reduction in the support they receive,

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49 *See Windstream Order* at ¶ 8.

50 *See LEC Price Cap Order* at ¶ 31.

51 *See 2008 FairPoint Waiver Order* at ¶ 9; *MAG Second Further Notice* at ¶ 10.

52 *See ACS Order* at ¶¶ 20-21; *CenturyTel Order at* ¶¶ 16-17; *PRTC Order* at 23-24; *Windstream Order* at ¶¶ 20-21.

depending on whether line loss is a factor. The Commission has previously expressed a preference for explicit support, through universal service support mechanisms, as opposed to implicit support through access charges.[53] Therefore, as the Commission recognized in its prior price cap conversion orders,[54] there is good cause for the requested waivers, which would allow the FairPoint Petitioning LECs to continue to receive support via ICLS while capping or reducing their interstate access charges.

C. Limited Waiver of the Commission's NECA Notification Rule

To the extent necessary, the FairPoint Petitioning LECs seek waiver of Section 69.3(i)(1) of the Commission's rules so that they may notify NECA of their intent to withdraw from NECA tariffs on short notice.[55] Good cause exists to waive Section 69.3(i)(1) because absent waiver, this procedural limitation would nullify any other relief granted if the Commission does not grant the petition by March 1, 2010. In its prior price cap conversion orders, the Commission found that there is good cause to allow a carrier to notify NECA of its intent to withdraw within 30 days after the Commission grants a petition to convert to price cap status if such withdrawal would not "impose an undue hardship on NECA."[56] Here, NECA will not suffer an undue hardship because it has actual notice of the FairPoint Petitioning LECs'

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53 *Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613, ¶¶ 15, 62-68 (2001); *CALLS Order* at ¶ 111. *See also ACS Order* at ¶ 20; *CenturyTel Order at* ¶ 16; *PRTC Order* at ¶ 23; *Windstream Order* at ¶ 20

54 *See ACS Order* at ¶ 20; *CenturyTel Order at* ¶ 18; *PRTC Order* at ¶ 23; *Windstream Order* at ¶ 20.

55 47 C.F.R. § 69.3(i)(1) (requiring incumbent LECs that plan to withdraw from NECA tariffs to notify NECA of their intent to do so by March 1st of the tariff filing year in which they plan to leave the tariffs).

56 *See ACS Order* at ¶¶ 23-24; *CenturyTel Order at* ¶ 20; *PRTC Order* at ¶¶ 26-27; *Windstream Order* at ¶¶ 23-24.

request for waivers.[57]

IV. CONCLUSION

For the foregoing reasons, the FairPoint Petitioning LECs request that the Commission expeditiously grant the requested waivers to permit them to convert to price cap regulation as of July 1, 2010.

Respectfully submitted,

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February 18, 2010

[57] *See* Declaration at ¶ 10.

Attachment A

FairPoint Operating Subsidiaries (LECs)

Bentleyville Communications Corporation
Berkshire Telephone Corporation
Big Sandy Telecom, Inc.
Bluestem Telephone Company
Chautauqua and Erie Telephone Corporation
China Telephone Company
Chouteau Telephone Company
Columbine Telecom Company
The Columbus Grove Telephone Company
Community Service Telephone Co.
C-R Telephone Company
The El Paso Telephone Company
Ellensburg Telephone Company
ExOp of Missouri, Inc.
FairPoint Communications Missouri, Inc.
FairPoint Vermont, Inc.
Fremont Telcom Co.
Fretel Communications, LLC
The Germantown Independent Telephone Company
GTC, Inc.
Maine Telephone Company
Marianna and Scenery Hill Telephone Company
Northland Telephone Company of Maine, Inc.
Northern New England Telephone Operations LLC
Odin Telephone Exchange, Inc.
The Orwell Telephone Company
Peoples Mutual Telephone Company
Sidney Telephone Company
Standish Telephone Company
Sunflower Telephone Company, Inc.
Taconic Telephone Corp.
Telephone Operating Company of Vermont LLC
YCOM Networks, Inc.

DECLARATION OF PATRICK L. MORSE

I, Patrick L. Morse, hereby make the following declarations, under penalty of perjury, in support of the foregoing Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief ("Petition"):

1. I am Senior Vice President, Governmental Affairs, for FairPoint Communications, Inc., Debtor-in-Possession ("FairPoint"), and I am familiar with FairPoint's local exchange and exchange access operations generally, and the accounting, pricing and tariffing practices of its local exchange carrier ("LEC") subsidiaries specifically.

2. FairPoint is the parent of a number of subsidiaries operating as LECs. These include China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, Standish Telephone Company, each a debtor-in-possession (collectively, the "FairPoint Petitioning LECs").

3. China Telephone Company operates a single study area in Maine. FairPoint Vermont, Inc. operates a single study area in Vermont. Maine Telephone Company and Standish Telephone Company operate a single combined study area in Maine. Northland Telephone Company of Maine, Inc. and Sidney Telephone Company operate a single combined study area in Maine. The Petition thus covers four study areas in Maine and Vermont.

4. Each of the FairPoint Petitioning LECs: (i) operates as a separate subsidiary of FairPoint; (ii) is currently regulated as a rate-of-return carrier under the rules of the Federal Communications Commission ("FCC"); (iii) is a participant in the NECA traffic-sensitive pool; and (iv) currently receives local switching support ("LSS").

5. Of FairPoint's LEC subsidiaries: (i) China Telephone Company, Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company, each a debtor-in-possession, currently operate as rate-of-return carriers in Maine; (ii) FairPoint Vermont, Inc., Debtor-in-Possession, currently operates as a rate-of-return carrier in Vermont; (iii) Northern New England Telephone Operations LLC, Debtor-in-Possession, currently operates in Maine and New Hampshire as a price cap carrier; (iv) Telephone Operating Company of Vermont LLC, Debtor-in-Possession, currently operates in Vermont as a price cap carrier; and (v) Community Service Telephone Co., Debtor-in-Possession, currently operates in Maine as an average schedule company.

6. FairPoint's other rate-of-return regulated LEC subsidiaries serve rural areas with low population densities and face a variety of market conditions. FairPoint seeks to maintain rate-of-return regulation for these LECs, so as to allow them to maintain efficient operations and provide rate stability. FairPoint also seeks to maintain Community Service Telephone Co. as an average schedule company.

7. If the Petition is granted, FairPoint would file a price cap tariff setting forth separate rates for each of the four covered study areas.

8. Once the FairPoint Petitioning LECs are converted to price cap regulation, FairPoint has no intention of reverting those LECs back to rate-of-return regulation. The proposed conversion would more closely align the regulatory status, operations, and rate structure of FairPoint's northern New England operations. Reverting the FairPoint Petitioning LECs to rate-of-return status would undo these benefits.

9. In order to facilitate the conversion of the FairPoint Petitioning LECs from rate-of-return to price cap regulation by July 1, 2010, the FairPoint Petitioning LECs would require approval of their petition by May 1, 2010.

10. NECA would not suffer an undue hardship if the Petition is granted. NECA has actual notice of the FairPoint Petitioning LECs' intention to seek these waivers.

The foregoing is true and accurate to the best of my information, knowledge and belief, as of the date of this declaration.

Executed: February 17, 2010